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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/626,582	07/25/2003	Andrew M. Kuhn	P-5802	9537

26253 7590 04/19/2007
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EXAMINER

WHALEY, PABLO S

ART UNIT	PAPER NUMBER
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1631

MAIL DATE	DELIVERY MODE
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04/19/2007

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

14

**Advisory Action
Before the Filing of an Appeal Brief**

Application No.

10/626,582

Applicant(s)

KUHN, ANDREW M.

Examiner

Pablo Whaley

Art Unit

1631

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 30 March 2007 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☐ The period for reply expires _____ months from the mailing date of the final rejection.
b) ☒ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
(a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);
(b) ☐ They raise the issue of new matter (see NOTE below);
(c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
(d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: _____. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
5. ☐ Applicant's reply has overcome the following rejection(s): _____.
6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
7. ☒ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☒ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.
The status of the claim(s) is (or will be) as follows:
Claim(s) allowed: _____.
Claim(s) objected to: _____.
Claim(s) rejected: 9-18.
Claim(s) withdrawn from consideration: 1-8 and 19-34.

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing of good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because:
See Continuation Sheet.
12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08) Paper No(s). _____.
13. ☐ Other: _____.

Continuation of 11. does NOT place the application in condition for allowance because: Applicant's amendment After Final, filed 03/30/2007, will be entered. However, for purposes of appeal, the amendments to the claims do not overcome the rejections of record for the following reasons.

CLAIM REJECTIONS - 35 USC § 112, 2nd Paragraph

Claims 9-18 would be rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 9 has been amended and now recites the limitation "displaying to a user whether said sample assay has a predetermined characteristic based on the result of the subsequent comparison." As written, the limitation "whether a said sample assay..." is indefinite, therefore it is unclear what exactly is being displayed to a user. Clarification would be requested.

CLAIM REJECTIONS - 35 USC § 102

Claims 9-18 remain rejected under 35 U.S.C. 102 (b) as being anticipated by Yang et al. (US 6,216,049; Issued: Apr. 10, 2001), as set forth in the Office action mailed 01/30/2007.

Applicant's arguments, filed 3/30/2007, that Yang et al. does not teach a "subsequent" correcting and comparing step is not persuasive for the following reasons.

Claim 9 requires steps of assigning values, correcting values, comparing corrected values to a threshold, and again correcting the corrected values based on corrected values that exceed the threshold. As set forth in the previous office action, mailed 1/30/07, Yang et al. teaches assigning values, correcting values, and comparing corrected values to a threshold [Ref. Claim 1], wherein said assigning comprises comparing each of the data values with adjacent data values to determine values that are greater than a predetermined amount and subsequent adjusting of said data values [Ref. Claim 3], which is indeed a teaching for a subsequent correction of initial values, as in claim 9. Yang et al. also provides for a computer-readable medium for performing the claimed method steps [Ref. Claim 12], as in claim 9. Therefore, the Examiner maintains that he has broadly and reasonably interpreted these limitations to encompass the teachings of Yang et al. Applicant's arguments that their invention "uses a two-stage iteration" for correction and comparison is not persuasive, as there instant claims do not recite any such features. For these reasons, Yang et al. teach all of the limitations of claims 9-18.

Claims 9-11, 13, and 17-18 remain rejected under 35 U.S.C. 102 (b) as being anticipated by Kurnick et al. (Sensors and Actuators B, 1999, vol. 60, p.19-26), as set forth in the Office action mailed 1/30/2007.

Applicant's arguments, filed 3/30/2007, that Kurnick et al. does not teach "initially assigning respective values" is not persuasive, as the instant claims do not recite such limitations. Applicant's arguments that Kurnick et al. do not teach "assigning respective numerical values to the data values" but merely plots data from an algorithm, are not persuasive for the following reasons. As set forth in the Office action, mailed 1/30/2007, the specification does not provide any limiting definitions that would serve to illustrate in what way data values are respectively assigned to numerical values. Therefore, the Examiner maintains that he has broadly and reasonably interpreted this limitation to encompass the teaches of Kurnick et al. Kurnick et al. uses a Mixture of Experts (MOE) algorithm for predicting numerical values for raw data obtained over time and assigning them to values on graph [Fig. 4]. Furthermore, the Examiner maintains that Kurnick et al. does not merely display raw data, but also provides for correction of data [Section 4.1, para. 1]; comparison of data to predefined values or thresholds, and exclusion of data that exceed predefined thresholds (i.e. secondary correction) [p.22, col. 2, paragraph 3], as in instant claims 9 and 13. algorithm is applied to the corrected data set and compared to reference blood glucose values [Fig. 4], which correlates to second comparing data as in instant claim 9. For these reasons, the Examiner maintains that Kurnick et al. indeed teach all of the limitations of claims 9-11, 13, 17-18.

CLAIM REJECTIONS - 35 USC § 101

Claims 9-18 were rejected under 35 U.S.C. 101 as being directed to non-statutory subject matter. Applicant's arguments, filed 03/30/2007, are persuasive in view of the amendment(s) to instant claim(s) 9 directed to "displaying to a user."

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Pablo Whaley whose telephone number is (571)272-4425. The examiner can normally be reached on 9:30am - 6pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor Ram Shukla can be reached at 571-272-0735.

The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system.

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PRIMARY EXAMINER

